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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2023

MICHELLE ROHDE  
P. O. Box 552  
Carmichael, CA 95609

**A C C U S A T I O N**

Respiratory Care Practitioner License No.1296

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On April 19, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 1296 to Michelle Rohde (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein but expired on April 30, 2006 and has not yet been renewed.

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3. This Accusation is brought before the Respiratory Care Board (Board),

4. Section 3710 of the Code states, in pertinent part: “The Respiratory Care

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following

“(d) Conviction of a crime that substantially relates to the qualifications, functions, and duties of a respiratory care practitioner. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction. . . .

“(g) Conviction of a violation of any of the provisions of this chapter or of any

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

"(c) Applied for employment or worked in any health care profession or

1 environment while under the influence of alcohol. . . .”

2 8. Section 3752 of the Code states:

3 “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
4 made to a charge of any offense which substantially relates to the qualifications, functions,  
5 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning  
6 of this article. The board shall order the license suspended or revoked, or may decline to  
7 issue a license, when the time for appeal has elapsed, or the judgment of conviction has  
8 been affirmed on appeal or when an order granting probation is made suspending the  
9 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the  
10 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of  
11 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
12 indictment.”

13 9. California Code of Regulations, title 16, section 1399.370, states, in  
14 pertinent part:

15 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
16 shall be considered to be substantially related to the qualifications, functions or duties of a  
17 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
18 perform the functions authorized by his or her license or in a manner inconsistent with the  
19 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
20 those involving the following:

21 “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting  
22 the violation of or conspiring to violate any provision or term of the Act.

23 . . .

24 “(c) Conviction of a crime involving driving under the influence or reckless driving  
25 while under the influence. . . .”

#### 26 COST RECOVERY

27 10. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

28 "In any order issued in resolution of a disciplinary proceeding before the board, the

1 board or the administrative law judge may direct any practitioner or applicant found to have committed  
2 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and  
3 prosecution of the case. . . ."

4 11. Section 3753.7 of the Code states:

5 "For purposes of [the Respiratory Care Practice Act], costs of prosecution shall include  
6 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,  
7 and service fees."

8 12. Section 3753.1 of the Code states, in pertinent part:

9 "(a) An administrative disciplinary decision imposing terms of probation may include,  
10 among other things, a requirement that the licensee-probationer pay the monetary costs associated with  
11 monitoring the probation. . . ."

#### 12 FIRST CAUSE FOR DISCIPLINE

13 (Working in a Health Care Environment While Under the Influence of Alcohol)

14 13. Respondent is subject to disciplinary action under Business & Professions  
15 Code section 3750.5(c) in that she was under the influence of alcohol while working in a health  
16 care environment. The circumstances are as follows:

17 14. On February 27, 2006, respondent was employed as a polysomnographic  
18 technologist at the Sutter Sleep Disorders Center in Roseville, California. On that date, she began  
19 her regularly scheduled shift, from 1900 hours (7:00 p.m.) until 0730 hours (7:30 a.m.). On  
20 February 27, 2006 at approximately 11:00 p.m., D.G., respondent's manager, received a telephone  
21 call from one of respondent's co-workers who informed him that respondent appeared to be under  
22 the influence of alcohol. D.G. was at home when he received the call, and he immediately drove  
23 to the workplace where he observed respondent who appeared to be asleep at her computer  
24 workstation. He approached her and smelled a strong odor of alcohol. He woke respondent up,  
25 and observed that her eyes were bloodshot, and her breath smelled of alcohol. She admitted that  
26 she had been drinking alcohol at the worksite. She showed D.G. her locker and he observed an  
27 open bottle of wine which was almost empty, and a full glass of wine in the locker. Based on  
28 respondent's objective symptoms and admission, D.G. asked respondent to submit to alcohol

1 testing. She agreed to a breath test. At approximately 0104 hours (1:04 a.m.) on February 28,  
2 2006, respondent tested positive for alcohol in the amount of .190%. At approximately 0123 hours  
3 (1:23 a.m.), her breath test was positive for alcohol in the amount of .212%. Respondent was  
4 terminated from employment effective February 28, 2006.

5 15. Therefore, respondent's act of being under the influence of alcohol while  
6 working in a health care environment is a violation of Business & Professions Code section  
7 3750.5(c) and cause to discipline her license.

## 8 SECOND CAUSE FOR DISCIPLINE

### 9 (Conviction)

10 16. Respondent is subject to disciplinary action under sections 3750(d) and  
11 3752 [substantially related conviction], 3750(g) and CCR1399.370(c) [conviction involving  
12 driving under the influence] in that she was convicted upon her plea of nolo contendere to a  
13 violation of Vehicle Code section 23152(b) [driving with a blood alcohol level of 0.08% or more].  
14 The circumstances are as follows:

15 17. On January 10, 2006, at approximately 8:25 a.m. respondent was observed  
16 driving through the intersection of Rampart Drive and Jan Drive in Carmichael, California without  
17 stopping at the stop sign. She was stopped by the California Highway Patrol and asked to perform  
18 a series of field sobriety tests, which she did not or could not perform as demonstrated. A  
19 preliminary alcohol screening test was performed which indicated a blood alcohol level over  
20 0.08%. Respondent was arrested for driving under the influence and transported to the  
21 Sacramento County Jail. There, she consented to a breath test, which indicated results of 0.26% at  
22 9:13 a.m. Respondent told the arresting officer that she was driving home from work at Sutter  
23 Hospitals and she had begun drinking at 6:00 a.m. Respondent subsequently pled nolo contendere  
24 to and, on February 17, 2006, was convicted of one misdemeanor count of Vehicle Code section  
25 23152(b) (driving with a blood alcohol level of 0.08% or more). She was placed on informal  
26 probation on certain terms and conditions.

27 18. On the basis of the foregoing facts, respondent's conduct constitutes a  
28 violation of Business and Professions Code sections 3750(d), 3750(g), and 3752.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 1296, issued to Michelle Rohde.
2. Ordering Michelle Rohde to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: May 4, 2006

Original signed by Liane Zimmerman for:  
STEPHANIE NÚNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant